

HOUSE BILL 566

By Harwell

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 10; Title 4, Chapter 1, Part 2; Title 16, Chapter 5; Title 16, Chapter 3; Title 16, Chapter 4; Title 17, Chapter 1 and Title 17, Chapter 4, relative to election of judges.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 16-3-101, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) Judges of the supreme court shall be elected in nonpartisan elections at the regular judicial election held every eight (8) years as follows: one (1) of the supreme court judges shall be elected by the qualified voters of the entire state to represent each of the three (3) grand divisions and two (2) of the supreme court judges shall be elected by the qualified voters of the entire state to represent the state at large. At the time of qualifying for election, each candidate shall select whether such candidate is running as a candidate in a particular grand division or running at large. The two (2) at large judges shall be the two candidates running at large receiving the highest number of votes. Each candidate shall reside in the grand division for which the candidate is elected and the two (2) candidates elected for the state at large shall not reside in the same grand division; provided that nothing in this subsection shall be construed as prohibiting the at large candidate with the second highest vote total from establishing residence in another grand division if such candidate resided in the same grand division as the candidate with the highest vote total so long as such move occurs prior to commencement of such judges term.

SECTION 2. Tennessee Code Annotated, Section 16-4-102, is amended by deleting the section in its entirety and by substituting instead the following:

Section 16-4-102. At the regular judicial election held every eight (8) years, there shall be elected in nonpartisan elections twelve (12) judges of the court of appeals as follows:

(1) Four (4) judges shall be elected by the qualified voters of the state's eastern grand division, as described in § 4-1-202;

(2) Four (4) judges shall be elected by the qualified voters of the state's middle grand division, as described in § 4-1-203; and

(3) Four (4) judges shall be elected by the qualified voters of the state's western grand division, as described in § 4-1-204.

Each judge shall be at least thirty (30) years of age, shall be duly licensed to practice law in the state of Tennessee, shall reside within the grand division from which he or she was appointed or elected, and shall have been a resident of the state for a period of at least five (5) years immediately preceding appointment or election to the court. The oath of office of each judge shall be filed and entered on the minutes of the court in the particular grand division from which he or she has been appointed or elected; and the oath shall likewise be filed and entered on the records in the office of the secretary of state at Nashville.

SECTION 3. Tennessee Code Annotated, Section 16-5-101, is amended by adding the following sentence to the end of the section:

The court shall be composed of twelve (12) judges.

SECTION 4. Tennessee Code Annotated, Section 16-5-102, is amended by deleting the section in its entirety and by substituting instead the following:

Section 16-5-102. At the regular judicial election held every eight (8) years, there shall be elected in nonpartisan elections twelve (12) judges of the court of criminal appeals as follows:

(1) Four (4) judges shall be elected by the qualified voters of the state's eastern grand division, as described in § 4-1-202;

(2) Four (4) judges shall be elected by the qualified voters of the state's middle grand division, as described in § 4-1-203; and

(3) Four (4) judges shall be elected by the qualified voters of the state's western grand division, as described in § 4-1-204.

Each judge shall be at least thirty (30) years of age, shall be duly licensed to practice law in the state of Tennessee, shall reside within the grand division from which he or she was appointed or elected, and shall have been a resident of the state for a period of at least five (5) years immediately preceding appointment or election to the court.

SECTION 5. Tennessee Code Annotated, Section 16-5-103(a), is amended by deleting the subsection in its entirety.

SECTION 6. Tennessee Code Annotated, Section 17-1-103, is amended by deleting the section in its entirety and by substituting instead the following:

Section 17-1-103. Justices of the supreme court shall be elected by the qualified voters of the state, in compliance with the requirements of § 16-3-101. The judges of the court of appeals and the judges of the court of criminal appeals shall be elected by the qualified voters of the respective grand divisions of the state, in accordance with the provisions of §§ 16-4-102 and 16-5-102. Chancellors, circuit judges, and judges of special courts shall be elected by the qualified voters of the respective judicial districts, and special judicial districts.

SECTION 7. Tennessee Code Annotated, Title 17, Chapter 1, Part 3, is amended by deleting § 17-1-301 in its entirety and by substituting instead the following:

Section 17-1-301.

(a) If a vacancy occurs during the term of office of a judge of a circuit, chancery or criminal court, or any other state trial court of record, then the vacancy must be filled by the qualified voters of the judicial district at the next regular August election occurring more than thirty (30) days after the vacancy arises. The governor shall appoint a person to discharge the duties of such office until August 31 following such election.

(b) If a vacancy occurs during the term of office of a judge of the court of appeals or court of criminal appeals, then the vacancy must be filled by the qualified voters of the grand division at the next regular August election occurring more than thirty (30) days after the vacancy arises. The governor shall appoint a person to discharge the duties of such office until August 31 following such election.

(c) If a vacancy occurs during the term of office of a judge of the supreme court, then the vacancy must be filled by the qualified voters of the state at the next regular August election occurring more than thirty (30) days after the vacancy arises; provided that the vacancy shall be filled in a manner consistent with the provisions of § 16-3-101 and the requirements of Article VI, Section 2 of the Constitution of the state of Tennessee. The governor shall appoint a person to discharge the duties of such office until August 31 following such election; provided that the appointment shall be made in a manner consistent with the requirements of Article VI, Section 2 of the Constitution of the state of Tennessee.

SECTION 8. Tennessee Code Annotated, Title 17, Chapter 4, is amended by deleting Parts 1 and 2.

SECTION 9. Tennessee Code Annotated, Title 2, Chapter 10, is amended by adding the following sections as a new part thereto:

Section 2-10-501. This part shall be known and may be cited as the "Tennessee Judicial Public Campaign Financing Act".

Section 2-10-502. The purpose of this part is to ensure fairness of supreme and appellate court judicial elections in Tennessee. It is also the purpose of this act to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in Tennessee to influence the outcome of elections. Accordingly, this act establishes the Tennessee judicial election fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This part is available to candidates for supreme and appellate court elections to be held in 2008 and thereafter. Candidates participating in this act must also comply with all other applicable election and campaign laws and rules. The registry of election finance shall administer this act and the Tennessee judicial election fund.

Section 2-10-503. As used in this part, unless the context otherwise requires:

(1) "Campaign expenditure" shall not include loan payments, refunds, or contributions made by candidates to other candidates, political campaign committees, or political parties, for purposes of calculating amounts certified candidates receive;

(2) "Certified candidate" means a candidate running for office who chooses to participate in the Tennessee Judicial Public Campaign Financing Act and who is certified as a Tennessee Judicial Public Campaign Financing Act candidate under § 2-10-505(e) of this part;

(3) “Contested judicial election” mean elections in which there are more candidates than the number to be elected;

(4) “Contribution” and “expenditure” have the same meaning as defined in § 2-10-102;

(5) “Election cycle” comprises the general election for election to the same term of the same office;

(6) “Fund” means the Tennessee judicial election fund established in § 2-10-504 of this part;

(7) “Nonparticipating candidate” means a candidate running for election to the supreme or an appellate court who does not choose to participate in the Tennessee Judicial Public Campaign Financing Act and who is not seeking to be certified under § 2-10-505(e) of this part;

(8) “Office” means a judge of the supreme or an appellate court;

(9) “Participating candidate” means a candidate who is running for office who is seeking to be certified as a Tennessee Judicial Public Campaign Financing Act candidate under § 2-10-505(e) of this part;

(10) “Qualifying contribution” means a donation of not less than ten dollars (\$10) and not more than one hundred dollars (\$100) in the form of a check or money order payable to the candidate that is:

(A) Made by any registered voter who resides in a county served by the office the candidate is seeking;

(B) Made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the candidate;
and

(C) Acknowledged by a written receipt, on a multicopy form provided by the registry, which identifies the complete name, residence address, and county of residence of the contributor and the amount and date of the contribution made; states that the contributor is a registered voter who resides in a county served by the office being sought by the candidate; states that the contributor authorizes the candidate to use the contribution to qualify to receive campaign funds from the Tennessee judicial election fund; and is signed by the contributor and the candidate or the candidate's representative.

"Qualifying contribution" also includes contributions from the candidate's own funds or those of the candidate's spouse, parents, brothers, and sisters, in any amount up to an aggregate total of one thousand dollars (\$1,000) for a statewide qualifying candidate and up to an aggregate total of five hundred dollars (\$500) for a non-statewide candidate, but those funds shall not be included in the number of qualifying contributions needed to be certified under § 2-10-505 (e) of this part;

(11) "Excess qualifying contributions" means the qualifying contributions received in excess of a sum to be determined by multiplying the minimum number of qualifying contributions required for that office by the maximum dollar amount allowed for such contributions;

(12) "Qualifying period" means the period beginning one hundred twenty (120) days before the close of the filing period for candidates running for the office and ending thirty (30) days after the close of the filing period for candidates running for the office; and

(13) "Registry" means the registry of election finance.

Section 2-10-504.

(a) The Tennessee judicial election fund is hereby established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the registry related to this part. The fund is a special, dedicated, non-lapsing fund. Any interest generated by the fund is credited to the fund. The registry shall administer the fund.

(b) Money received from the following sources must be deposited in the fund:

(1) Unspent fund revenues distributed to any certified candidate who does not remain a candidate until the election for which they were distributed, or such revenues that remain unspent by a candidate following the date of the election for which they were distributed;

(2) Voluntary donations made directly to the fund; and

(3) Fund moneys appropriated for the use of the Tennessee judicial election fund by the general assembly pursuant to subsection (c) of this section.

(c) By April 1, 2008, and every two (2) years thereafter, the registry shall prepare and provide to the senate and house judiciary committees a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of the Tennessee Judicial Public Campaign Financing Act. In its report, the registry shall set out the funds received to date, the expected needs of the fund during the next election cycle, and the amount of the appropriation from the general assembly that will be needed.

Section 2-10-505.

(a)

(1) Any individual choosing to participate in the Tennessee Judicial Public Campaign Financing Act shall first file with the registry a declaration of intent to participate in this part as a candidate for judge of the supreme or an appellate court. The declaration of intent shall be filed with the registry prior to or during the qualifying period, except as provided under subsection (m) of this section, according to forms and procedures developed by the registry. A candidate choosing to participate in the Tennessee Judicial Public Campaign Financing Act must submit a declaration of intent prior to collecting any qualifying contributions under this part.

(2) A candidate who files a declaration of intent shall swear or affirm that the candidate has complied with and will continue to comply with Tennessee Judicial Public Campaign Financing Act contribution and expenditure limits and will comply with all other requirements set forth in this part or promulgated by the registry.

(b) After becoming a participating candidate as defined by § 2-10-503 of this part and prior to certification, participating candidates shall not accept contributions, except for qualifying contributions. A participating candidate may expend only from the qualifying contributions raised and shall not use other funds.

(c) Participating candidates must obtain a minimum number of qualifying contributions in order to be certified, as follows:

(1) For a candidate for a judge of the supreme court, at least one thousand five hundred (1,500) registered Tennessee voters shall have

supported the candidacy by providing a qualifying contribution to that candidate. No more than one third (1/3) of a candidate's qualifying contributions submitted to the registry for purposes of certification shall come from registered voters who are residents of the same congressional district; and

(2) For a candidate for judge of the court of appeals or court of criminal appeals, at least seven hundred fifty (750) registered voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(d) All participating candidates shall report qualifying contributions with the registry at least five (5) business days after the end of the qualifying period in accordance with procedures developed by the registry, except as provided under subsection (k) of this section.

(e) Upon receipt of a final submittal of the record of qualifying contributions by a participating candidate, the registry shall determine whether or not the candidate has:

(1) Signed and filed a declaration of intent to participate in this part;

(2) Submitted copies of the appropriate number of forms described in § 2-10-503(10)(C) of this part signed by contributors who are registered voters, which the registry shall verify through a random sample or other means it adopts;

(3) Qualified as a candidate as provided in the election code;

(4) Complied with expenditure restrictions; and

(5) Otherwise met the requirements for participation in this part.

The registry shall certify candidates complying with the requirements of this section as soon as possible and no later than five (5) business days after final submittal of qualifying contributions.

Certified candidates shall comply with all requirements of this part after certification and throughout the primary election and general election periods. Failure to do so is a violation of this part subject to civil penalty and other appropriate action by the registry as provided in § 2-10-508 of this part.

(f) After filing a declaration of intent, a candidate shall limit campaign expenditures and debts to the qualifying contributions and the money distributed to the candidate from the fund. All revenues from qualifying contributions or public funds must be used for campaign-related purposes. The registry shall publish guidelines outlining permissible campaign-related expenditures. For accounting purposes, all qualifying contributions shall be spent before the candidate spends money received from the fund. A candidate shall return to the fund any amount that is unspent and uncommitted at the time that person ceases to be a candidate before the election for which the fund money was distributed. A candidate shall return to the fund any amount that was unspent and uncommitted after the date of the election for which the fund money was distributed.

(g) The registry shall distribute to certified candidates revenues from the fund in amounts determined under subsection (h) of this section, minus any excess qualifying contributions, within three (3) business days of determining that the candidate is in a contested election. No funds shall be distributed for uncontested elections. Funds may be distributed to certified candidates under

this section by any mechanism that is expeditious, ensures accountability, and safeguards the integrity of the fund.

(h) By December 1, 2007, and no less frequently than every two (2) years thereafter, as appropriate, the registry shall certify the amount of funds, rounded to the nearest one hundred dollars (\$100), to be distributed to participating candidates based on the office. In determining such amount, the registry shall average the actual amount of campaign expenditures made by certified candidates and noncertified candidates for the office during the last election cycle. However, for initial elections held under this part, each candidate shall be entitled to:

(1) For judge of the supreme court, one-fifth ($1/5$) of the median amount of campaign expenditures made by the two (2) candidates for governor receiving the highest number of votes during the last general election for governor; and

(2) For judge of the court of appeals or court of criminal appeals, one-twelfth ($1/12$) of the median amount of campaign expenditures made by the two (2) candidates for governor receiving the highest number of votes during the last general election for governor.

(l) Any noncertified candidate who has a certified candidate as an opponent shall report to the registry on the 40th and 20th days before an election a statement of the amount that the noncertified candidate intends to spend for that election, as well as the total amount raised and borrowed to date. Any entity that intends to make independent expenditures to support or oppose a certified candidate shall report to the registry on the 40th and 20th days before an election a statement of the amount that it intends to spend for that election, as well as the

total amount raised and borrowed to date. Any noncertified candidate with a certified opponent, or any entity making independent expenditures in support of or opposition to a certified candidate, shall report electronically to the registry within twenty-four (24) hours after the total amount of expenditures or obligations made, or funds raised or borrowed, exceeds the base level of public funding described in subsection (h) of this section. After this 24-hour filing, the noncertified candidate shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be made according to procedures developed by the registry.

(j) Notwithstanding other provisions of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations, and related activities to the registry according to procedures developed by the registry. Upon the filing of a final report for any special election or general election, each candidate who has revenues from the fund remaining unspent shall return all such unspent revenues to the registry. In developing these procedures, the registry shall utilize existing campaign reporting procedures wherever practicable. The registry shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

(k) For races involving special elections due to vacancy, the registry shall establish procedures for qualification, certification, disbursement of fund revenues, and return of unspent fund revenues.

(l) The initial decision on an issue concerning qualification, certification, or distribution under this part shall be made by the executive director of the registry. The procedure for challenging that decision is as follows:

(1) A person aggrieved by a certification decision by the executive director of the registry may appeal to the full registry within three (3) business days of the certification decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five (5) business days after an appeal is properly made, and after due notice is given to the parties, the registry shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the registry's decision was improper. The registry shall rule on the appeal within three (3) business days after the completion of the hearing.

Section 2-10-506.

(a) The registry, with the advice of the Tennessee Judicial Public Campaign Financing Advisory Council, shall administer the provisions of this part.

(b) There is established under the registry of election finance the Tennessee Judicial Public Campaign Financing Advisory Council, hereinafter referred to as the "council". The council shall advise the registry on the rules and opinions it adopts for the enforcement and administration of this part and on the funding needs of the fund. The council shall consist of five (5) members to be appointed by the governor. Appointments shall be made to reflect the broadest possible representation of Tennessee citizens, striving to ensure that the commission is composed of members who are diverse in ethnicity, race, gender, geographic residency, heritage, perspective and experience. The governor shall take into consideration recommendations made by the public and by political and other organizations. No person shall be eligible to be a member of the council

who would be ineligible to serve on a county election commission. The initial members shall be appointed by September 1, 2007. Of the initial appointees, two (2) shall be appointed for two-year terms, two (2) shall be appointed for four-year terms, and one (1) shall be appointed for a six-year term according to random lot. Thereafter, appointees are appointed to serve six-year terms. A person may not serve more than two (2) full terms. The Council shall elect a chair from among its membership. The chair shall serve in that capacity for one (1) year and shall be eligible for reelection. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term.

Section 2-10-507. The registry of election finance is authorized to promulgate rules and regulations to effectuate the provisions of this part. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

Section 2-10-508. In addition to any other penalties that may be applicable, any person who violates any provision of this part is subject to a civil penalty of up to ten thousand dollars (\$10,000) per violation. In addition to any fine, for good cause shown, a candidate found in violation of this part may be required to return to the fund all amounts distributed to the candidate from the fund. If the registry makes a determination that a violation of this part has occurred, the registry shall calculate and assess the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount that has been assessed. In determining whether or not a candidate is in violation of the expenditure limits of this part, the registry may consider as a mitigating factor any circumstances out of the person's control.

SECTION 10. The provisions of this act shall not be construed to be an appropriation of funds, and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect July 1, 2007, the public welfare requiring it, and shall apply to all supreme and appellate court vacancies and all elections for supreme and appellate court judges occurring on or after such date.